

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SILVIA MERAZ, *et al.*,
Plaintiffs,
v.
NISSAN NORTH AMERICA, INC.,
et al.,
Defendants.

Case No. 2:24-cv-06061-FLA (ASx)

**ORDER REMANDING ACTION FOR
LACK OF SUBJECT MATTER
JURISDICTION**

RULING

On July 19, 2024, Plaintiffs Silvia Meraz and Jessenia Meraz (“Plaintiffs”) filed the Complaint in the Los Angeles County Superior Court, asserting three causes of action against Defendant Nissan North America, Inc. (“Defendant” or “Nissan”) for violations of the California Song-Beverly Consumer Warranty Act (the “Song-Beverly Act”), Cal. Civ. Code § 1790, *et seq.*, and one cause of action for fraudulent inducement. Dkt. 1-1 at 27–34.¹ As relevant here, Plaintiffs seek actual damages, civil penalties, punitive damages, and attorney’s fees and costs. *Id.* at 35.

On July 19, 2024, Defendant removed the action to this court, alleging the existence of diversity jurisdiction under 28 U.S.C. § 1332(a)(1). Dkt. 1 at 4–5. On July 24, 2024, the court ordered the parties to show cause (“OSC”) why the action should not be remanded for lack of subject matter jurisdiction due to an insufficient amount in controversy. Dkt. 10. Defendant filed its response on August 7, 2024. Dkt. 12 (“Def. Resp.”).

Having reviewed the Notice of Removal and Defendant’s response to the OSC, the court finds Defendant fails to establish subject matter jurisdiction by a preponderance of the evidence and REMANDS this action to the Los Angeles County Superior Court.

DISCUSSION

Federal courts are courts of “limited jurisdiction,” possessing “only that power authorized by [the] Constitution and statute, which is not to be expanded by judicial decree.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citations omitted); U.S. CONST. art. III, § 2, cl. 1. District courts are presumed to lack jurisdiction unless the contrary appears affirmatively from the record. *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 n. 3 (2006). Additionally, federal

¹ The court cites documents by the page numbers added by the court’s CM/ECF System rather than any page numbers included natively.

1 courts have an obligation to examine jurisdiction *sua sponte* before proceeding to the
2 merits of a case. *See Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999).

3 Federal courts have jurisdiction where an action arises under federal law or
4 where each plaintiff's citizenship is diverse from each defendant's citizenship and the
5 amount in controversy exceeds \$75,000, exclusive of interest and costs. 28 U.S.C.
6 §§ 1331, 1332(a). Thus, a notice removing an action from state court to federal court
7 must include "a plausible allegation that the amount in controversy exceeds the
8 jurisdictional threshold." *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574
9 U.S. 81, 89 (2014). Where "the plaintiff contests, or the court questions, the
10 defendant's allegation" concerning the amount in controversy, "both sides [shall]
11 submit proof," and the court may then decide whether the defendant has proven the
12 amount in controversy "by a preponderance of the evidence." *Id.* at 88–89. As the
13 removing party, Defendant bears the burden to justify this court's exercise of
14 jurisdiction. *Gaus v. Miles, Inc.*, 980 F.2d 564, 567 (9th Cir. 1992). "Federal
15 jurisdiction must be rejected if there is any doubt as to the right of removal in the first
16 instance." *Id.* at 566.

17 **A. Actual Damages**

18 At issue here is whether the amount in controversy exceeds the \$75,000
19 jurisdictional minimum for diversity jurisdiction. Under the Song-Beverly Act, a
20 plaintiff may recover "in an amount equal to the actual price paid or payable by the
21 buyer," reduced by "that amount directly attributable to use by the buyer prior to the
22 time the buyer first delivered the vehicle to the manufacturer or distributor, or its
23 authorized service and repair facility for correction of the problem that gave rise to the
24 nonconformity." Cal. Civ. Code § 1793.2(d)(2)(B)–(C). This includes a mileage
25 offset, which is calculated by reducing the purchase price by an amount directly
26 proportional to the number of miles driven. *Id.* § 1793.2(d)(2)(C).

27 Defendant states the purchase price paid for the subject vehicle was \$39,598.84.
28 Def. Resp. at 9; Dkt. 12-1 at 2, ¶ 5. After adding estimated finance charges and

1 downpayments paid, and deducting a mileage offset, Defendant calculates Plaintiffs’
2 total base damages are \$39,364.65. Def. Resp. at 12. For purposes of this Order, the
3 court assumes, without making any related legal or factual determinations, that the
4 actual damages Plaintiffs might reasonably recover in this action are \$39,364.65.

5 **B. Civil Penalties**

6 Defendant next argues Plaintiffs’ request for civil penalties of twice the base
7 amount of damages must be included in the amount in controversy calculation. Def.
8 Resp. at 12–13. “A plaintiff who establishes that a violation of the Song-Beverly Act
9 was willful may recover a civil penalty of up to two times the amount of actual
10 damages.” *Estrada v. FCA US LLC*, Case No. 2:20-cv-10453-PA (JPRx), 2021 WL
11 223249, at *3 (C.D. Cal. Jan. 21, 2021) (citing Cal. Civ. Code § 1794(c)) (brackets
12 omitted). However, “[t]he civil penalty under California Civil Code § 1794(c) cannot
13 simply be assumed.” *Pennon v. Subaru of Am., Inc.*, Case No. 2:22-cv-03015-SB
14 (RAOx), 2022 WL 2208578, at *2 (C.D. Cal. June 17, 2022) (remanding action where
15 defendant provided no specific argument or evidence for including a civil penalty in
16 the amount in controversy) (quotation marks omitted).

17 District courts regularly find Song-Beverly Act plaintiffs’ conclusory
18 allegations regarding willfulness are insufficient to place civil penalties in controversy
19 absent specific facts pleaded. *See Estrada*, 2021 WL 223249, at *3 (collecting cases
20 “remanding where civil penalties were too speculative for inclusion in the amount-in-
21 controversy”) (quotation marks omitted). This is because “[s]imply assuming a civil
22 penalty award is inconsistent with the principle that the defendant must provide
23 evidence that it is more likely than not that the amount in controversy requirement is
24 satisfied.” *Makol v. Jaguar Land Rover N. Am., LLC*, Case No. 5:18-cv-03414-NC,
25 2018 WL 3194424, at *3 (N.D. Cal. June 28, 2018) (internal quotation marks
26 removed); *see also Khachatryan v. BMW of N. Am., LLC*, Case No. 2:21-cv-01290-
27 PA (PDx), 2021 WL 927266, at *2 (C.D. Cal. Mar. 10, 2021).

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1 Defendant notes “[s]ome courts do not include civil penalties in the
2 jurisdictional analysis unless the removing defendant makes some showing regarding
3 the possibility of civil damages,” but argues “Nissan has made that showing here by
4 pointing to evidence including the RISC, the repair orders and history.” Def. Resp. at
5 14 (internal quotation marks omitted). The court disagrees.

6 Plaintiffs allege their vehicle suffers from a defect in connection with the
7 Emergency Brake System. Dkt. 1-1 at 5–6 (¶¶ 5, 7), 10–11 (¶¶ 25–29). The
8 Complaint alleges, and the repair orders submitted to the court indicate, Plaintiffs
9 presented the vehicle to Defendant’s authorized repair facility on four occasions in
10 connection with issues related to the alleged defect. *Id.* at 7–11 (¶¶ 15, 17–18, 20,
11 27); Dkt. 12-1 at 6–27. The Complaint does not plead any facts to indicate Plaintiffs
12 experienced the same issues after the authorized repair facility completed its repair
13 attempts. Dkt. 1-1 at 7–9 (¶¶ 15, 17–18, 20). Defendant does not identify any cases
14 in which civil penalties were awarded under comparable circumstances—let alone
15 civil penalties of twice the actual damages awarded. *See* Def. Resp. at 12–15.

16 The court, therefore, finds Defendant’s inclusion of civil penalties to establish
17 the amount in controversy is too speculative for inclusion in the court’s amount in
18 controversy calculation.

19 **C. Attorney’s Fees**

20 Defendant contends Plaintiffs’ demand for attorney’s fees provides an
21 additional reason for the court to determine the amount in controversy satisfies the
22 jurisdictional minimum. Def. Resp. at 15–16. In the Ninth Circuit, attorney’s fees
23 awarded under fee-shifting statutes may be considered in assessing the jurisdictional
24 threshold. *Gonzales v. CarMax Auto Superstores, LLC*, 840 F.3d 644, 648–49
25 (9th Cir. 2016). A removing defendant, however, must “prove that the amount in
26 controversy (including attorneys’ fees) exceeds the jurisdictional threshold by a
27 preponderance of the evidence ... with summary-judgment-type evidence.” *Fritsch v.*
28 *Swift Transp. Co. of Ariz., LLC*, 899 F.3d 785, 795 (9th Cir. 2018). “A district court

1 may reject the defendant's attempts to include future attorneys' fees in the amount in
2 controversy if the defendant fails to satisfy this burden of proof." *Id.*

3 "While a defendant may meet its burden to establish a reasonable estimate of
4 attorneys' fees by identifying awards in other cases, those cases must be similar
5 enough to the case at hand that the court can conclude that it is more likely than not
6 that the plaintiff may incur a similar fee award." *Kaplan v. BMW of N. Am., LLC*,
7 Case No. 3:21-cv-00857-TWR (AGS), 2021 WL 4352340, at *6 (S.D. Cal. Sept. 24,
8 2021); *see also D'Amico v. Ford Motor Co.*, Case No. 2:20-cv-02985-CJC (JCx),
9 2020 WL 2614610, at *4 (C.D. Cal. May 21, 2020) (recognizing "many cases alleging
10 violations of the [Song-Beverly] Act settle early"). Moreover, a defendant fails to
11 show attorney's fees are part of the amount in controversy where it "makes no effort
12 to explain what amount of attorney fees might be sought or awarded in this case,
13 neglecting to include so much as an estimate of the hours or billing rates that might
14 apply." *Vega v. FCA US, LLC*, Case No. 2:21-cv-05128-VAP (MRWx), 2021 WL
15 3771795, at *4 (C.D. Cal. Aug. 25, 2021).

16 Defendant contends "Plaintiffs' total claim for attorney's fees, including future
17 fees through trial, more likely than not, exceeds \$20,000." Def. Resp. at 16 (italics
18 omitted). As stated, the court finds Defendant has only established by a
19 preponderance of the evidence that \$39,364.65 in actual damages are at issue.
20 Accordingly, Defendant bears the burden to show, by a preponderance of the
21 evidence, that at least \$35,635.35 in attorney's fees are in controversy. Even if the
22 court were to assume *arguendo* that Plaintiffs were reasonably likely to incur \$20,000
23 in attorney's fees in connection with this action, that would only bring the
24 demonstrated amount in controversy to \$59,364.65.

25 Given that the removal statute is construed strictly and all doubts are resolved in
26 favor of remand, the court finds Defendant has failed to demonstrate the amount in
27 controversy exceeds the jurisdictional minimum based on attorney's fees.

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D. Punitive Damages


Finally, Defendant notes Plaintiffs seek punitive damages in the Complaint. Def. Resp. at 10. Defendant, however, does not present any argument or legal authority to establish that any specific amount of punitive damages are reasonably at issue. *See* Def. Resp. The court, therefore, finds Defendant fails to carry its burden to establish any specific amount of punitive damages are in controversy here.

CONCLUSION

For the aforementioned reasons, the court finds Defendant has failed to demonstrate the amount in controversy exceeds \$75,000, as required to establish diversity jurisdiction. The court, therefore, REMANDS the action to the Los Angeles County Superior Court, Case No. 23CHCV03266. All dates and deadlines in this court are VACATED. The clerk of the court shall close the action administratively.

IT IS SO ORDERED.

Dated: September 3, 2024


FERNANDO L. AENLLE-ROCHA
United States District Judge